

APPEAL NO. 033102
FILED JANUARY 21, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 10, 2003, with the record closing on October 31, 2003. With respect to the issues before him, the hearing officer determined that the respondent (carrier) is relieved from liability for the injury of _____, because the appellant (claimant) was intoxicated at the time of the injury; that the injury does not extend to include injuries to the lumbar or cervical spine; and that the claimant did not have disability. The claimant appeals on sufficiency of the evidence grounds. There is no response from the carrier contained in the appeals file.

DECISION

Affirmed.

The hearing officer did not err in making the complained-of determinations. Conflicting evidence was presented regarding the disputed issues. The carrier conceded that the claimant sustained a work-related injury on the date in question, but asserted that the claimant was intoxicated at the time. The claimant asserted that he was not intoxicated at the time of his work-related injury. There was conflicting evidence on the issues of whether the claimant was intoxicated at the time of the injury and whether the injury included cervical and lumbar injuries. The hearing officer was not persuaded that the claimant sustained his burden of proving that he had the normal use of his mental and physical faculties after the carrier rebutted the presumption of sobriety by producing probative evidence of intoxication. The hearing officer likewise was not persuaded that the incident at work on _____, caused damage or harm to the physical structure of the claimant's cervical and lumbar spine. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Nothing in our review of the record reveals that the hearing officer's intoxication or extent-of-injury determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the hearing officer's determination that the claimant did not have disability within the meaning of Section 401.011(16), in that a compensable injury is a prerequisite to a finding of disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge